

Remarks

Applicants have canceled claims 1-18 and 20 without prejudice or disclaimer and added new claims 21-183. No new matter has been added.

Original claim 19 and new claims 21-183 are pending.

I. Amendment of the Claims

Claims 1-18 and 20 have been canceled without prejudice or disclaimer in favor of new claims 21-183 in order to claim additional embodiments of the subject matter of the provisionally-elected group.

New claims 21-183 find support in the claims as originally filed and throughout the specification. Specific examples of support for new claims 21-183 are outlined in the table presented below. These examples are not intended to be exhaustive.

Claim	Support in the Specification
21-46, 80-105	page 5, paragraph 16; page 6, paragraphs 17-18; page 84, paragraph 203
47-55, 106-114	page 80, paragraph 191; page 84, paragraph 205; page 85, paragraph 207
54, 56-79, 113, 115-138, 140	page 84, paragraph 205 to page 85, paragraph 206
30, 32, 65, 66, 89, 91, 124, 125, 141, 142, 158, 160, 174, 176	page 86, paragraph 209-210
31, 90, 159, 175	page 86, paragraph 241
32, 55, 66, 91, 114, 125, 142, 160, 176	page 84, paragraph 204; page 86, paragraphs 208-211; page 88, paragraph 218; page 89, paragraph 220 to page 90, paragraph 221
33-39, 67-73, 92-98, 126-132, 143, 144,	page 113, paragraph 307

Claim	Support in the Specification
161-167, 177-183	
40, 74, 99, 133	page 76, paragraph 180; page 133, paragraph 382
41, 75, 100, 134	page 80, paragraph 192-193; page 87, paragraph 212; page 88, paragraph 216; page 90, paragraphs 222-223
42, 76, 101, 135	page 87, paragraph 212; page 92, paragraphs 226-227
43, 44, 77, 78, 102, 103, 136, 137	page 85, paragraph 205; page 88, paragraph 217 to page 89, paragraph 220; page 189, paragraph 563 to page 192, paragraph 573
45, 46, 79, 104, 105, 138	page 76, paragraph 180; page 88, paragraph 215; page 113, paragraph 307
139-144	page 88, paragraph 217 to page 89, paragraph 220
145-167	page 77, paragraph 183
168-172	page 87, paragraph 214; page 132, paragraph 381

Accordingly, no new matter has been added by way of amendment, and entry of the above amendment is therefore respectfully solicited.

II. The Restriction Requirement

Pursuant to Paper No. 3, mailed February 19, 2003, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-IV. In addition, the Examiner has required that should Applicants elect Group IV, a further election of one of the inventions of Groups A-G is required under 35 U.S.C. § 121. The Examiner contends that the inventions are distinct, each from the other.

In response, Applicants provisionally elect, *with traverse*, the invention of Group III, represented by original claim 19, and new claims 21-183, drawn to antibodies, for further prosecution. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final. Applicants point out that claims 1-18 and 20 have been canceled without prejudice or

disclaimer, and that new claims 21-183 are directed to subject matter falling within the ambit of Group III as cast by the Examiner. Applicants further point out the cancellation of the claim of Group IV (*i.e.*, claim 20) render the further election of one of the inventions of Groups A-G moot.

With respect to the Examiner's restriction of groups directed to a particular nucleic acid sequence, polypeptides encoded thereby, and antibodies recognizing such polypeptides, Applicants respectfully disagree and traverse. Even assuming *arguendo*, that Groups I-IV represented distinct and independent inventions, restriction remains improper unless the examiner can show that the search and examination of these groups would entail a "serious burden". M.P.E.P. § 803. In the present situation, although the Examiner has argued that Groups I-IV are separately classified or represent divergent subject matter, Applicants nonetheless submit that, with respect to a given sequence, a search of the claims of the groups directed to that sequence would also provide useful information for the claims of the other groups directed to that sequence. For example, in many if not most publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, antibodies to the protein, and methods of making and using the same. Thus, since the searches for proteins, nucleic acids encoding such proteins, antibodies to such proteins, and methods of making and using the same commonly overlap, Applicants respectfully submit that the Examiner's assertion that the combined search and examination of such compositions would entail a serious burden as to a particular sequence has been rebutted, even assuming *arguendo* that all of the searches were not coextensive.

Further, with respect to the Examiner's restriction of groups directed to different nucleic acid sequences (*e.g.*, Groups A-G as cast by the Examiner), which are not

separately classified, Applicants also traverse. In particular, Applicants note that the Examiner has not addressed M.P.E.P. § 803.04. Pursuant to the notice *Examination of Patent Applications Containing Nucleotide Sequences*, 1192 O.G. 68 (November 19, 1996), § 803.04 holds that even when nucleotide sequences encoding different proteins are contained in an application, a reasonable number, normally ten sequences, will be examined in a single application. Accordingly, a reasonable number of the instant sequences should be examined together, and the Examiner has not indicated why seven sequences are unreasonable in the present case. Thus, Applicants respectfully submit that the present requirement for election is improper.

Accordingly, in view of M.P.E.P. §§ 803 and 803.04, claims directed to Groups I-IV and Groups A-G should be searched and examined in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Conclusion

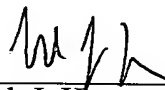
Entry of the above amendment is respectfully solicited. In view of the foregoing remarks, Applicants believe that this application is now in condition for examination, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension

of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

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Respectfully submitted,

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